IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.8562-M of 2007
Date of Decision:- 05.09.2007

Kuldeep Singh ....Petitioner(s)

through
Mr.S.S.Behl, Advocate

vs.

State of Punjab ....Respondent(s)

through
Mr.Rajesh Bhardwaj, DAG, Punjab.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J. (ORAL)

In this petition under Section 482 Cr.P.C. the petitioner is aggrieved at the order dated 17.8.2006 passed by the learned Special Judge, Ropar whereby his application for discharge in a case arising out of F.I.R.No.8 dated 25.4.2002 under Sections 420,409,467,468,471 and 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, Mohali has been dismissed and cognizance has been taken against him along with his co-accused under the aforestated Sections.

As it appears from the record, an advertisement was issued by the Rural Development and Panchayat Department to fill up nine vacancies of Junior Engineers (Civil) which were reserved for physically handicapped

candidates.

The petitioner at that time was working as District Development and Panchayat Officer and he was appointed as Member of the Committee which interviewed the candidates on 8/9.1.2001. In sum and substance, it is alleged that the Selection Committee recommended two candidates, namely, Kanwalpreet Singh and Vijay Kumar for appointment who had either not applied and/or were ineligible on the cut off date. On the basis of an alleged enquiry conducted by the Vigilance Bureau, the subject F.I.R. was registered against the then Minister Incharge, the Director of the Department as also the Members of the Selection Committee including the petitioner.

It also appears from the record and is not disputed by learned State counsel that twice, sanction sought under Section 19 of the P.C.Act as well as Section 197 Cr.P.C. has been declined to prosecute the petitioner.

On that premise, following statement was made before the learned Special Judge on 3.5.2005:-

> "Statement of Shri Pardip Mehta, Special Public Prosecutor for the State.
>
> Since against the accused Shri R.Venktaratanam, IAS, Mrs.Kiran Dhawan, Deputy Director and Shri Kuldip Singh, DDPO the sanctions for prosecution has been refused by competent authority, the court cannot take cognizance against them in view of Section 19 of P.C.Act as they are still in service. As such they may not be summoned and considered for discharge for want of sanction at

this stage.

RO&AC Sd/-
Special Judge, Ropar
03.05.2005"

However, as it appears that the petitioner along with his co-accused was not formally discharged and the trial proceedings were being adjourned from time to time. Accordingly, he moved an application for his discharge. The said application, however, has been disposed of by the learned Special Judge vide his impugned order dated 17.8.2006 with the observation that though no cognizance can be taken against the petitioner and his co-accused under the PC Act for want of sanction, however, cognizance can be taken against them under Sections 420,409,467,468,471 and 120-B IPC as their action cannot be said to have been performed in the discharge of the official duties. Therefore, sanction under Section 197 Cr.P.C is not necessitated.

The above-stated impugned order dated 17.8.2006 had been set aside qua the petitioner's co-accused, namely, R.Venketratnam and Kiran Dhawan vide a separate order of even date though for altogether different reasons.

I have heard learned counsel for the parties and perused the material on record including the impugned order.

As it appears from the observations made in para 7 of the impugned order, the learned Special Judge has proceeded on the premise that since two ineligible candidates were also selected, the action of the Selection Committee cannot be said to have been performed in the discharge of its official duties.

On the other hand, it is contended on behalf of the petitioner

that he was merely nominated as a Member of the Selection Committee which was duty bound to interview all those candidates who had been invited for the interview.

It appears that in order to determine *prima facie* complicity of the petitioner in the matter, the Court is required to look into the relevant records in order to find out as to what role is attributable to the Members of the Selection Committee with regard to inclusion of ineligible etc. candidates amongst those who were finally interviewed and/or were selected.

Was it an exercise done by the Establishment of the Department and only a list was forwarded to the Selection Committee and/or the inclusion of the names of the candidates noticed above was done by the Members of the Selection Committee themselves, would be the crucial fact to determine the ailment of complicity.

This aspect, however, having not been taken into consideration though for the purpose of tentative formation of the opinion, there can be no other conclusion but to hold that the petitioner's application for discharge requires to be disposed of by the learned Special Judge afresh and in accordance with law.

Consequently, this petition is allowed; the impugned order is set aside, however, with a direction to the learned Special Judge to pass an appropriate order in accordance with law and in the light of the observations made here-in-above.

September 05, 2007 **(SURYA KANT)**
poonam **JUDGE**